

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

MICHAEL LEE GORDON,

Petitioner,

v.

CASE NO. 2:07-cv-398

JUDGE SARGUS

STATE OF OHIO,

Respondent.

MAGISTRATE JUDGE KEMP

OPINION AND ORDER

On May 14, 2007, the Magistrate Judge issued a *Report and Recommendation* pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts recommending that the instant habeas corpus petition be dismissed as barred by the one-year statute of limitations under 28 U.S.C. §2244(d). Petitioner has filed objections to the Magistrate Judge's *Report and Recommendation*.


Petitioner objects to the Magistrate Judge's recommendation of dismissal of his petition as untimely. Petitioner argues that *Maupin v. Smith*, 785 F.2d 135, 138 (6th Cir. 1986), applies to his claims that are barred by the one-year statute of limitations. Additionally, he asserts that this Court should consider his claims because the state court dismissed his post conviction petition on grounds other than timeliness. Finally, petitioner alleges that his habeas corpus petition is based on "newly discovered evidence." *See Objections*.

These arguments are not persuasive. As discussed in the Magistrate Judge's *Report and Recommendation*, petitioner's conviction became final on January 9, 1999. He waited more than eight years, until March 15, 2007, to file the instant habeas corpus petition. He waited until October

25, 2005, to pursue a petition for post conviction relief in the state trial court. Moreover, and contrary to his allegation here, the record does not indicate that any of petitioner's claims result from facts or evidence that did not become available until 2005. Further, the record fails to reflect that equitable tolling of the statute of limitations is appropriate. *See King v. Bell*, 378 F.3d 550, 553 (6 Cir.2004) (citations omitted).

Pursuant to 28 U.S.C. 636(b)(1), this Court has conducted a *de novo* review of those portions of the *Report and Recommendation* objected to by petitioner. For the foregoing reasons, and for the reasons discussed in the Magistrate Judge's *Report and Recommendation*, petitioner's objections are **OVERRULED**. This action is hereby **DISMISSED** as untimely.

IT IS SO ORDERED.

 7-10-2007
EDMUND A. SARGUS, JR.
United States District Judge